

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY SCOTT FOSSUM,

Petitioner,

v.

F. GUZMAN,

Respondent.

No. 1:24-cv-00903-KES-EPG (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
RESPONDENT'S MOTION TO DISMISS,
DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS, DIRECTING CLERK OF
COURT TO CLOSE CASE, AND
DECLINING TO ISSUE CERTIFICATE OF
APPEALABILITY

(Docs. 10, 13)

Petitioner Timothy Scott Fossum is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 25, 2024, the assigned magistrate judge issued findings and recommendations recommending that the petition be dismissed as untimely because it was filed outside the one-year statute of limitations imposed by 28 U.S.C. § 2244(d)(1). Doc. 13. The findings and recommendations were served on the parties and contained notice that any objections were to be filed within thirty (30) days of the date of service. *Id.* To date, no objections have been filed, and the time for doing so has passed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has conducted a de novo review of the case. Having carefully reviewed the file, the Court holds the findings and

1 recommendations to be supported by the record and proper analysis.

2 Having found that petitioner is not entitled to habeas relief, the Court now turns to
3 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus
4 has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is
5 allowed only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28
6 U.S.C. § 2253. Where, as here, the Court denies habeas relief on procedural grounds without
7 reaching the underlying constitutional claims, the Court should issue a certificate of appealability
8 “if jurists of reason would find it debatable whether the petition states a valid claim of the denial
9 of a constitutional right and that jurists of reason would find it debatable whether the district court
10 was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “Where a
11 plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a
12 reasonable jurist could not conclude either that the district court erred in dismissing the petition or
13 that the petitioner should be allowed to proceed further.” *Id.*

14 In the present case, the Court finds that reasonable jurists would not find the Court's
15 determination that the petition should be dismissed debatable or wrong, or that petitioner should
16 be allowed to proceed further. Therefore, the Court declines to issue a certificate of appealability.

17 Accordingly:

- 18 1. The findings and recommendations issued on November 25, 2024, Doc. 13, are
19 ADOPTED in full;
- 20 2. Respondent's motion to dismiss, Doc. 10, is GRANTED;
- 21 3. The petition for writ of habeas corpus is DISMISSED;
- 22 4. The Clerk of Court is directed to close the case; and
- 23 5. The Court declines to issue a certificate of appealability.

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26 IT IS SO ORDERED.

27 Dated: January 19, 2025

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UNITED STATES DISTRICT JUDGE

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